

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

FREDERICK BROWN,	:	
	:	
Plaintiff,	:	Civil Action No. 5:07-cv-79
	:	
v.	:	PROCEEDINGS UNDER
	:	42 U.S.C. § 1983
GEORGIA DEPARTMENT OF	:	
CORRECTIONS, et al.,	:	
	:	
Defendants.	:	

***ORDER ON UNITED STATES MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION***

Before the Court is the United States Magistrate Judge's Recommendation [Doc. 52] that Defendants' Motion for Summary Judgment [Doc. 41] be **denied**. Specifically, the Magistrate Judge recommends that Plaintiff's claims for deliberate indifference, retaliation, and violation of the ADA have genuine issues of material fact and therefore must proceed to trial. Defendants filed an Objection to the Recommendation [Doc. 49], claiming that the Magistrate Judge erred as Defendants are entitled to qualified immunity, that there are no issues of material fact, and that Plaintiff's claims are barred by res judicata. Having considered Defendants' Objections and having investigated those matters *de novo*, this Court agrees with the findings and conclusions of the United States Magistrate Judge. Therefore, the Recommendation is **HEREBY ADOPTED AND MADE THE ORDER OF THE COURT.**

Having considered Defendants' Objections, the Court finds them to be without merit. Defendants' objections contain a reiteration of the arguments contained in their motion seeking summary judgment, most of which have been specifically addressed by the

Magistrate Judge in his Report and Recommendation. Defendants are correct, however, that the Recommendation does not specifically address Defendants' allegations that res judicata bars Plaintiff's claims. Contrary to Defendants' assertions, the Court finds that res judicata does not bar Plaintiff's claims. The Eleventh Circuit in Brown v. Head, 190 Fed. Appx. 808 (11th Cir. 2006), found that Plaintiff's deliberate indifference claims against that defendant at best showed mere negligence and therefore was insufficient to establish deliberate indifference. In contrast, Plaintiff's claims here may show deliberate indifference, depending on the jury's determination of facts at trial. Thus, this Court agrees with the Recommendation to deny Defendants' Motion for Summary Judgment.

Also before the Court are Plaintiff's Motion to Reopen and Compel Discovery [Doc. 56] and Plaintiff's Request for Extension of Time to File Response to Defendants' Objection to the Magistrate Judge's Order and Recommendation [Doc. 57]. Both Motions are hereby **DENIED as moot** as Plaintiff's claims will proceed to trial.

SO ORDERED, this 31st day of March 2009.

S/ C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

SSH